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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,450	07/11/2003	Minh Van Ngo	50432-600	3502
7590 05/27/2005 McDERMOTT, WILL & EMERY 600 13th Street, N.W. Washington, DC 20005-3096			EXAMINER TRAN, LONG K	
			ART UNIT 2818	PAPER NUMBER

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/617,450

Applicant(s)

NGO ET AL.

Examiner

Long K. Tran

Art Unit

2818

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on April 08, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 14 is/are pending in the application.
- 4a) Of the above claim(s) 1 - 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10 - 14 is/are rejected.
- 7) ☒ Claim(s) 10 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **10** is rejected under 35 U.S.C. 102(b) as being anticipated by Huang et al. US Patent No. 6,080,639.

3. Regarding claim **10**, Huang et al. disclose a semiconductor device (flash memory) comprising:

Two gate electrode structures, spaced apart by a gap (figures 1 – 4), on a semiconductor (not shown under the gates structures. See column 4, lines 10 – 17);

an undoped oxide liner 110 (figures 1 – 4; column 3, line 15) on the gate electrode structures in the gap; and

a layer of boron (B) and phosphorous (PI-doped silicon oxide (BPSG) (figure 2; column 1, lines 22 – 25) on the undoped oxide liner filling the gap.

Huang does not teach the BPSG layer is a SA-CVD layer. However this limitation is taken to be a product by process limitation, it is the patentability product and not of recited process steps which must be established. Therefore, when the prior art discloses a product which reasonably appears to be identical with or only slightly different than the product claimed in a product-by process claim, a rejection based on sections 102 or 103 is fair. A product by process claim directed to the product per se, no

matter how actually made, In re Hirao, 190 USPQ 15 at 17 (footnote 3). See In re Fessman, 180 USPQ 324,326(CCPA 1974); In re Marosi et al., 218 USPQ 289,292 (Fed. Cir. 1983); and particularly In re Thorpe, 227 USPQ 964,966 (Fed. Cir. 1985), all of which make it clear that it is the patentability of the final structure of the product "gleaned" from the process steps, which must be determined in a "product by process" claim, and not the patentability of the process. See also MPEP 2113. Moreover, an old or obvious product produced by a new method is not a patentable product, whether claim in "product by process" claim or not.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim **11** is rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. US Patent No. 6,080,639.

6. Regarding claim **11**, Huang et al. disclose the claimed invention of claim 10 and the undoped oxide liner 110 having a thickness of 500 Å to 2000 Å.

This thickness range does not cover the range 400 Å to 500 Å as the claimed limitation.

However, it would have been well known in the art that the selection of those parameters such as **energy, concentration, temperature, time, molar fraction,**

depth, thickness, etc., would have been obvious and involve routine optimization which has been held to be within the level of ordinary skill in the art. "Normally, it is to be expected that a change in **energy, concentration, temperature, time, molar fraction, depth, thickness, etc.**, or in combination of the parameters would be an unpatentable modification. Under some circumstances, however, changes such as these may impart patentability to a process if the particular ranges claimed produce a new and unexpected result which is different in kind and not merely degree from the results of the prior art ... such ranges are termed "critical ranges and the applicant has the burden of proving such criticality.... More particularly, where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller* 105 USPQ233, 255 (CCPA 1955). See also *In re Waite* 77 USPQ 586 (CCPA 1948); *In re Scherl* 70 USPQ 204 (CCPA 1946); *In re Irmischer* 66 USPQ 314 (CCPA 1945); *In re Norman* 66 USPQ 308 (CCPA 1945); *In re Swenson* 56 USPQ 372 (CCPA 1942); *In re Sola* 25 USPQ 433 (CCPA 1935); *In re Dreyfus* 24 USPQ 52 (CCPA 1934).

Moreover, the thickness range 400 Å to 500 Å has not been alleged by applicant to be of significant importance for patentability.

7. Claims **12** and **13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. US Patent No. 6,080,639 in view of Tseng et al. US Patent Application Publication No. 2003/00033658).

8. Regarding claim **12**, Huang et al. disclose the claimed invention of claim 10 except for the undoped oxide liner comprises undoped silicon oxide derived from TEOS as cited in the present claim.

However, Tseng et al. show a flash memory comprising liner layer 40 (figure 4; column 2, [0018]) can be formed undoped silicate glass and PE-TEOS.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the silicon oxide liner of Huang with the PE-TEOS layer of Tseng, in order protect the underlying layer during etching process.

Regarding claim **13**, Huang et al. disclose the claimed invention of claim 10 and the gate structures comprise:

a tunnel oxide on the semiconductor substrate (not shown under the gates structures. See column 4, lines 10 – 17);

a floating gate electrode (not labeled) on the tunnel oxide;

a dielectric layer (not labeled) on the floating gate; and

a control gate (not labeled) on the interpoly dielectric.

Huang et al. do not teach the interpoly comprises an ONO as cited in the present claim.

However, Tseng et al. show interpoly 20 (figure 2) is an ONO.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the dielectric layer of Huang with the ONO of Tseng, in order keep electric charges, the electrons injected into the dielectric layer (ONO) are not evenly distributed within the entire silicon nitride layer.

9. Claim **14** rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. US Patent No. 6,080,639 in view of Tseng et al. US Patent Application Publication No. 2003/00033658) and further in view of Nakatani (US Patent No. 6,781,188).

10. Regarding claim **14**, Huang et al. and Tseng et al. disclose the claimed invention of claim 10 and claim 13 except for spacer (figure 4; not labeled) on side surfaces of the gate structures of Tseng flash memory being made of silicon oxide as cited in the present claim.

However, Yet et al. show silicon oxide sidewall spacers 40 (figure 4; column 4, lines 47 - 49) on the side of gate electrode structures 46 (figure 4).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the sidewall spacers of Tseng with the silicon oxide of Yeh et al., in order use spacers as a mask to form source and drain by implanting impurities into a substrate.

Response to Argument

11. Applicants' arguments have been fully considered but they are not persuasive.

Applicants argue that Huang teach away from using BPSG layer. The Examiner agrees. However, according to:

MPEP § 2141.02:

***PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING
DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS***

A prior art reference must be considered in its entirety, i.e., as a whole, including portions

that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the above reasons, it is believed that the rejections should be sustained. Feature of an invention not found in the claims can be given no patentable weight in distinguishing the claimed invention over the prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Long K. Tran whose telephone number is 571-272-1797. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Nelms can be reached on 571-272-1787. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Long Tran *LT*

May 25, 2005


David Nelms
Supervisory Patent Examiner
Technology Center 2800